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101ST CONGRESS
1ST SESSION

S. 933

AN ACT

To establish a clear and comprehensive prohibition of
discrimination on the basis of disability.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Americans with Disabilities Act of 1989”.

6 (b) TABLE OF CONTENTS.—The table of contents is as
7 follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.

TITLE I—EMPLOYMENT

- Sec. 101. Definitions.
- Sec. 102. Discrimination.
- Sec. 103. Defenses.
- Sec. 104. Illegal drugs and alcohol.
- Sec. 105. Posting notices.
- Sec. 106. Regulations.
- Sec. 107. Enforcement.
- Sec. 108. Effective date.

TITLE II—PUBLIC SERVICES

- Sec. 201. Definition.
- Sec. 202. Discrimination.
- Sec. 203. Actions applicable to public transportation provided by public entities considered discriminatory.
- Sec. 204. Regulations.
- Sec. 205. Enforcement.
- Sec. 206. Effective date.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

- Sec. 301. Definitions.
- Sec. 302. Prohibition of discrimination by public accommodations.
- Sec. 303. New construction in public accommodations and potential places of employment.
- Sec. 304. Prohibition of discrimination in public transportation services provided by private entities.
- Sec. 305. Study.
- Sec. 306. Regulations.
- Sec. 307. Exemptions for private clubs and religious organizations.
- Sec. 308. Enforcement.
- Sec. 309. Effective date.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

- Sec. 401. Telecommunication services for hearing-impaired and speech-impaired individuals.

TITLE V—MISCELLANEOUS PROVISIONS

- Sec. 501. Construction.
- Sec. 502. Prohibition against retaliation and coercion.
- Sec. 503. State immunity.
- Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.
- Sec. 505. Attorney's fees.
- Sec. 506. Technical assistance.
- Sec. 507. Federal wilderness areas.
- Sec. 508. Transvestites.
- Sec. 509. Congressional inclusion.
- Sec. 510. Illegal drug use.
- Sec. 511. Definitions.
- Sec. 512. Amendments to the Rehabilitation Act.
- Sec. 513. Severability.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—Congress finds that—

3 (1) some 43,000,000 Americans have one or more
4 physical or mental disabilities, and this number is in-
5 creasing as the population as a whole is growing older;

6 (2) historically, society has tended to isolate and
7 segregate individuals with disabilities, and, despite
8 some improvements, such forms of discrimination
9 against individuals with disabilities continue to be a se-
10 rious and pervasive social problem;

11 (3) discrimination against individuals with disabil-
12 ities persists in such critical areas as employment,
13 housing, public accommodations, education, transporta-
14 tion, communication, recreation, institutionalization,
15 health services, voting, and access to public services;

16 (4) unlike individuals who have experienced dis-
17 crimination on the basis of race, sex, national origin,
18 religion, or age, individuals who have experienced dis-
19 crimination on the basis of disability have often had no
20 legal recourse to redress such discrimination;

21 (5) individuals with disabilities continually encoun-
22 ter various forms of discrimination, including outright
23 intentional exclusion, the discriminatory effects of ar-
24 chitectural, transportation, and communication barriers,
25 overprotective rules and policies, failure to make modi-
26 fications to existing facilities and practices, exclusion-

1 ary qualification standards and criteria, segregation,
2 and relegation to lesser services, programs, activities,
3 benefits, jobs, or other opportunities;

4 (6) census data, national polls, and other studies
5 have documented that people with disabilities, as a
6 group, occupy an inferior status in our society, and are
7 severely disadvantaged socially, vocationally, economi-
8 cally, and educationally;

9 (7) individuals with disabilities are a discrete and
10 insular minority who have been faced with restrictions
11 and limitations, subjected to a history of purposeful un-
12 equal treatment, and relegated to a position of political
13 powerlessness in our society, based on characteristics
14 that are beyond the control of such individuals and re-
15 sulting from stereotypic assumptions not truly indica-
16 tive of the individual ability of such individuals to par-
17 ticipate in, and contribute to, society;

18 (8) the Nation's proper goals regarding individuals
19 with disabilities are to assure equality of opportunity,
20 full participation, independent living, and economic
21 self-sufficiency for such individuals; and

22 (9) the continuing existence of unfair and unneces-
23 sary discrimination and prejudice denies people with
24 disabilities the opportunity to compete on an equal
25 basis and to pursue those opportunities for which our

1 free society is justifiably famous, and costs the United
2 States billions of dollars in unnecessary expenses re-
3 sulting from dependency and nonproductivity.

4 (b) PURPOSE.—It is the purpose of this Act—

5 (1) to provide a clear and comprehensive national
6 mandate for the elimination of discrimination against
7 individuals with disabilities;

8 (2) to provide clear, strong, consistent, enforceable
9 standards addressing discrimination against individuals
10 with disabilities;

11 (3) to ensure that the Federal Government plays a
12 central role in enforcing the standards established in
13 this Act on behalf of individuals with disabilities; and

14 (4) to invoke the sweep of congressional authority,
15 including its power to enforce the fourteenth amend-
16 ment and to regulate commerce, in order to address
17 the major areas of discrimination faced day-to-day by
18 people with disabilities.

19 **SEC. 3. DEFINITIONS.**

20 As used in this Act:

21 (1) **AUXILIARY AIDS AND SERVICES.**—The term
22 “auxiliary aids and services” includes—

23 (A) qualified interpreters or other effective
24 methods of making aurally delivered materials
25 available to individuals with hearing impairments;

1 (B) qualified readers, taped texts, or other ef-
2 fective methods of making visually delivered ma-
3 terials available to individuals with visual impair-
4 ments;

5 (C) acquisition or modification of equipment
6 or devices; and

7 (D) other similar services and actions.

8 (2) **DISABILITY.**—The term “disability” means,
9 with respect to an individual—

10 (A) a physical or mental impairment that
11 substantially limits one or more of the major life
12 activities of such individual;

13 (B) a record of such an impairment; or

14 (C) being regarded as having such an impair-
15 ment.

16 (3) **STATE.**—The term “State” means each of the
17 several States, the District of Columbia, the Common-
18 wealth of Puerto Rico, Guam, American Samoa, the
19 Virgin Islands, the Trust Territory of the Pacific Is-
20 lands, and the Commonwealth of the Northern Mariana
21 Islands.

22 **TITLE I—EMPLOYMENT**

23 **SEC. 101. DEFINITIONS.**

24 As used in this title:

1 (1) COMMISSION.—The term “Commission”
2 means the Equal Employment Opportunity Commis-
3 sion established by section 705 of the Civil Rights Act
4 of 1964 (42 U.S.C. 2000e-4).

5 (2) COVERED ENTITY.—The term “covered
6 entity” means an employer, employment agency, labor
7 organization, or joint labor-management committee.

8 (3) EMPLOYEE.—The term “employee” means an
9 individual employed by an employer.

10 (4) EMPLOYER.—

11 (A) The term “employer” means a person
12 engaged in an industry affecting commerce who
13 has 15 or more employees for each working day
14 in each of 20 or more calendar weeks in the cur-
15 rent or preceding calendar year, and any agent of
16 such person, except that, for two years following
17 the effective date of this title, an employer means
18 a person engaged in an industry affecting com-
19 merce who has 25 or more employees for each
20 working day in each of 20 or more calendar
21 weeks in the current or preceding year, and any
22 agent of such person.

23 (B) EXCEPTIONS.—The term “employer”
24 does not include—

1 (i) the United States, a corporation
2 wholly owned by the government of the
3 United States, or an Indian tribe; or

4 (ii) a bona fide private membership club
5 (other than a labor organization) that is
6 exempt from taxation under section 501(c) of
7 the Internal Revenue Code of 1986.

8 (5) **ILLEGAL DRUG.**—The term “illegal drug”
9 means a controlled substance, as defined in schedules I
10 through V of section 202 of the Controlled Substances
11 Act (21 U.S.C. 812), the possession or distribution of
12 which is unlawful under such Act. The term “illegal
13 drug” does not mean the use of a controlled substance
14 pursuant to a valid prescription or other uses author-
15 ized by this Act.

16 (6) **PERSON, ETC.**—The terms “person”, “labor
17 organization”, “employment agency”, “commerce”,
18 and “industry affecting commerce”, shall have the
19 same meaning given such terms in section 701 of the
20 Civil Rights Act of 1964 (42 U.S.C. 2000e).

21 (7) **QUALIFIED INDIVIDUAL WITH A DISABIL-**
22 **ITY.**—The term “qualified individual with a disability”
23 means an individual with a disability who, with or
24 without reasonable accommodation, can perform the

1 essential functions of the employment position that
2 such individual holds or desires.

3 (8) REASONABLE ACCOMMODATION.—The term
4 “reasonable accommodation” may include—

5 (A) making existing facilities used by em-
6 ployees readily accessible to and usable by indi-
7 viduals with disabilities; and

8 (B) job restructuring, part-time or modified
9 work schedules, reassignment to a vacant posi-
10 tion, acquisition or modification of equipment or
11 devices, appropriate adjustment or modifications of
12 examinations, training materials or policies, the
13 provision of qualified readers or interpreters, and
14 other similar accommodations for individuals with
15 disabilities.

16 (9) UNDUE HARDSHIP.—

17 (A) IN GENERAL.—The term “undue hard-
18 ship” means an action requiring significant diffi-
19 culty or expense.

20 (B) DETERMINATION.—In determining
21 whether an accommodation would impose an
22 undue hardship on a covered entity, factors to be
23 considered include—

24 (i) the overall size of the business of a
25 covered entity with respect to the number of

1 employees, number and type of facilities, and
2 the size of the budget;

3 (ii) the type of operation maintained by
4 the covered entity, including the composition
5 and structure of the workforce of such entity;
6 and

7 (iii) the nature and cost of the accom-
8 modation needed under this Act.

9 **SEC. 102. DISCRIMINATION.**

10 (a) **GENERAL RULE.**—No covered entity shall discrimi-
11 nate against a qualified individual with a disability because of
12 the disability of such individual in regard to job application
13 procedures, the hiring or discharge of employees, employee
14 compensation, advancement, job training, and other terms,
15 conditions, and privileges of employment.

16 (b) **CONSTRUCTION.**—As used in subsection (a), the
17 term “discrimination” includes—

18 (1) limiting, segregating, or classifying a job appli-
19 cant or employee in a way that adversely affects the
20 opportunities or status of such applicant or employee
21 because of the disability of such applicant or employee;

22 (2) participating in a contractual or other arrange-
23 ment or relationship that has the effect of subjecting a
24 qualified applicant or employee with a disability to the
25 discrimination prohibited by this title (such relationship

1 includes a relationship with an employment or referral
2 agency, labor union, an organization providing fringe
3 benefits to an employee of the covered entity, or an or-
4 ganization providing training and apprenticeship pro-
5 grams);

6 (3) utilizing standards, criteria, or methods of
7 administration—

8 (A) that have the effect of discrimination on
9 the basis of disability; or

10 (B) that perpetuate the discrimination of
11 others who are subject to common administrative
12 control;

13 (4) excluding or otherwise denying equal jobs or
14 benefits to a qualified individual because of the known
15 disability of an individual with whom the qualified indi-
16 vidual is known to have a relationship or association;

17 (5) not making reasonable accommodations to the
18 known physical or mental limitations of a qualified in-
19 dividual who is an applicant or employee, unless such
20 covered entity can demonstrate that the accommoda-
21 tion would impose an undue hardship on the operation
22 of the business of such covered entity;

23 (6) denying employment opportunities to a job ap-
24 plicant or employee who is a qualified individual with a
25 disability, if such denial is based on the need of such

1 covered entity to make reasonable accommodation to
2 the physical or mental impairments of the employee or
3 applicant;

4 (7) using employment tests or other selection cri-
5 teria that screen out or tend to screen out an individual
6 with a disability or a class of individuals with disabil-
7 ities unless the test or other selection criteria, as used
8 by the covered entity, is shown to be job-related for
9 the position in question and is consistent with business
10 necessity; and

11 (8) failing to select and administer tests concern-
12 ing employment in the most effective manner to ensure
13 that, when such test is administered to a job applicant
14 or employee who has a disability that impairs sensory,
15 manual, or speaking skills, such test results accurately
16 reflect the skills, aptitude, or whatever other factor of
17 such applicant or employee that such test purports to
18 measure, rather than reflecting the impaired sensory,
19 manual, or speaking skills of such employee or appli-
20 cant (except where such skills are the factors that the
21 test purports to measure).

22 (c) **MEDICAL EXAMINATIONS AND INQUIRIES.**—

23 (1) **IN GENERAL.**—The prohibition against dis-
24 crimination as referred to in subsection (a) shall include
25 medical examinations and inquiries.

1 (2) PREEMPLOYMENT.—

2 (A) PROHIBITED EXAMINATION OR IN-
3 QUIRY.—Except as provided in paragraph (3), a
4 covered entity shall not conduct a medical exami-
5 nation or make inquiries of a job applicant or em-
6 ployee as to whether such applicant or employee
7 is an individual with a disability or as to the
8 nature or severity of such disability.

9 (B) ACCEPTABLE INQUIRY.—A covered
10 entity may make preemployment inquiries into the
11 ability of an applicant to perform job-related func-
12 tions.

13 (3) EMPLOYMENT ENTRANCE EXAMINATION.—A
14 covered entity may require a medical examination after
15 an offer of employment has been made to a job appli-
16 cant and prior to the commencement of the employ-
17 ment duties of such applicant, and may condition an
18 offer of employment on the results of such examination,
19 if—

20 (A) all entering employees are subjected to
21 such an examination regardless of disability;

22 (B) information obtained regarding the medi-
23 cal condition or history of the applicant is collect-
24 ed and maintained on separate forms and in sepa-

1 rate medical files and is treated as a confidential
2 medical record, except that—

3 (i) supervisors and managers may be in-
4 formed regarding necessary restrictions on
5 the work or duties of the employee and nec-
6 essary accommodations;

7 (ii) first aid and safety personnel may be
8 informed, when appropriate, if the disability
9 might require emergency treatment; and

10 (iii) government officials investigating
11 compliance with this Act shall be provided
12 relevant information on request; and

13 (C) the results of such physical examination
14 are used only in accordance with this title.

15 (4) EXAMINATION AND INQUIRY.—

16 (A) PROHIBITED EXAMINATIONS AND IN-
17 QUIRIES.—A covered entity shall not conduct or
18 require a medical examination and shall not make
19 inquiries of an employee as to whether such em-
20 ployee is an individual with a disability or as to
21 the nature or severity of the disability, unless
22 such examination or inquiry is shown to be job-
23 related and consistent with business necessity.

1 (B) ACCEPTABLE INQUIRIES.—A covered
2 entity may make inquiries into the ability of an
3 employee to perform job-related functions.

4 SEC. 103. DEFENSES.

5 (a) IN GENERAL.—It may be a defense to a charge of
6 discrimination under this Act that an alleged application of
7 qualification standards, tests, or selection criteria that screen
8 out or tend to screen out or otherwise deny a job or benefit to
9 an individual with a disability has been shown to be job-relat-
10 ed and consistent with business necessity, and such
11 performance cannot be accomplished by reasonable
12 accommodation.

13 (b) QUALIFICATION STANDARDS.—The term “qualifi-
14 cation standards” may include a requirement that an individ-
15 ual with a currently contagious disease or infection shall not
16 pose a direct threat to the health or safety of other individ-
17 uals in the workplace.

18 (c) RELIGIOUS ENTITIES.—

19 (1) IN GENERAL.—This title shall not prohibit a
20 religious corporation, association, educational institu-
21 tion, or society from giving preference in employment
22 to individuals of a particular religion to perform work
23 connected with the carrying on by such corporation,
24 association, educational institution, or society of its
25 activities.

1 (2) QUALIFICATION STANDARD.—Under this title,
2 a religious organization may require, as a qualification
3 standard to employment, that all applicants and em-
4 ployees conform to the religious tenets of such
5 organization.

6 SEC. 104. ILLEGAL DRUGS AND ALCOHOL.

7 (a) QUALIFIED INDIVIDUAL WITH A DISABILITY.—
8 For purposes of this title, the term “qualified individual with
9 a disability” shall not include any employee or applicant who
10 is a current user of illegal drugs, except that an individual
11 who is otherwise handicapped shall not be excluded from the
12 protections of this Act if such individual also uses or is also
13 addicted to drugs.

14 (b) AUTHORITY OF COVERED ENTITY.—A covered
15 entity—

16 (1) may prohibit the use of alcohol or illegal drugs
17 at the workplace by all employees;

18 (2) may require that employees shall not be under
19 the influence of alcohol or illegal drugs at the work-
20 place;

21 (3) may require that employees behave in con-
22 formance with the requirements established under the
23 Drug-Free Workplace of 1988 (41 U.S.C. 701 et seq.)
24 and that transportation employees meet requirements

1 established by the Secretary of Transportation with re-
2 spect to drugs and alcohol; and

3 (4) may hold an employee who is a drug user or
4 alcoholic to the same qualification standards for em-
5 ployment or job performance and behavior that such
6 entity holds other employees, even if any unsatisfactory
7 performance or behavior is related to the drug use or
8 alcoholism of such employee.

9 (c) DRUG TESTING.—

10 (1) IN GENERAL.—For purposes of this title, a
11 test to determine the use of illegal drugs shall not be
12 considered a medical examination.

13 (2) CONSTRUCTION.—Nothing in this title shall
14 be construed to encourage, prohibit, or authorize the
15 conducting of drug testing of job applicants or employ-
16 ees or making employment decisions based on such test
17 results.

18 SEC. 105. POSTING NOTICES.

19 Every employer, employment agency, labor organiza-
20 tion, or joint labor-management committee covered under
21 this title shall post notices in an accessible format to appli-
22 cants, employees, and members describing the applicable pro-
23 visions of this Act, in the manner prescribed by section 711
24 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

1 **SEC. 106. REGULATIONS.**

2 Not later than 1 year after the date of enactment of this
3 Act, the Commission shall issue regulations in an accessible
4 format to carry out this title in accordance with subchapter II
5 of chapter 5 of title 5, United States Code.

6 **SEC. 107. ENFORCEMENT.**

7 The remedies and procedures set forth in sections 706,
8 707, 709, and 710 of the Civil Rights Act of 1964 (42
9 U.S.C. 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be
10 available, with respect to the Commission or any individual
11 who believes that he or she is being subjected to discrimina-
12 tion on the basis of disability in violation of any provisions of
13 this Act, or regulations promulgated under section 106, con-
14 cerning employment.

15 **SEC. 108. EFFECTIVE DATE.**

16 This title shall become effective 24 months after the
17 date of enactment.

18 **TITLE II—PUBLIC SERVICES**

19 **SEC. 201. DEFINITION.**

20 As used in this title, the term “qualified individual with
21 a disability” means an individual with a disability who, with
22 or without reasonable modifications to rules, policies, and
23 practices, the removal of architectural, communication, and
24 transportation barriers, or the provision of auxiliary aids and
25 services, meets the essential eligibility requirements for the
26 receipt of services or the participation in programs or activi-

1 ties provided by a department, agency, special purpose
 2 district, or other instrumentality of a State or a local
 3 government.

4 **SEC. 202. DISCRIMINATION.**

5 No qualified individual with a disability shall, by reason
 6 of such disability, be excluded from the participation in, be
 7 denied the benefits of, or be subjected to discrimination by a
 8 department, agency, special purpose district, or other instru-
 9 mentality of a State or a local government.

10 **SEC. 203. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION**
 11 **PROVIDED BY PUBLIC ENTITIES CONSIDERED**
 12 **DISCRIMINATORY.**

13 (a) **DEFINITION.**—As used in this title, the term “public
 14 transportation” means transportation by bus or rail, or by
 15 any other conveyance (other than air travel) that provides the
 16 general public with general or special service (including char-
 17 ter service) on a regular and continuing basis.

18 (b) **VEHICLES.**—

19 (1) **NEW BUSES, RAIL VEHICLES, AND OTHER**
 20 **FIXED ROUTE VEHICLES.**—It shall be considered dis-
 21 crimination for purposes of this Act and section 504 of
 22 the Rehabilitation Act of 1973 (29 U.S.C. 794) for a
 23 public entity to purchase or lease a new fixed route bus
 24 of any size, a new intercity rail vehicle, a new com-
 25 muter rail vehicle, a new rapid rail vehicle, a new light

1 rail vehicle to be used for public transportation, or any
2 other new fixed route vehicle to be used for public
3 transportation and for which a solicitation is made later
4 than 30 days after the date of enactment of this Act, if
5 such bus, rail, or other vehicle is not readily accessible
6 to and usable by individuals with disabilities, including
7 individuals who use wheelchairs.

8 (2) USED VEHICLES.—If a public entity purchases
9 or leases a used vehicle to be used for public transpor-
10 tation after the date of enactment of this Act, such in-
11 dividual or entity shall make demonstrated good faith
12 efforts to purchase or lease such a used vehicle that is
13 readily accessible to and usable by individuals with dis-
14 abilities, including individuals who use wheelchairs.

15 (3) REMANUFACTURED VEHICLES.—If a public
16 entity remanufactures a vehicle, or purchases or leases
17 a remanufactured vehicle to be used for public trans-
18 portation, so as to extend its usable life for 5 years or
19 more, the vehicle shall, to the maximum extent feasi-
20 ble, be readily accessible to and usable by individuals
21 with disabilities, including individuals who use wheel-
22 chairs.

23 (c) PARATRANSIT AS A SUPPLEMENT TO FIXED
24 ROUTE PUBLIC TRANSPORTATION SYSTEM.—

1 (1) IN GENERAL.—If a public entity operates a
2 fixed route public transportation system to provide
3 public transportation, it shall be considered discrimina-
4 tion, for purposes of this Act and section 504 of the
5 Rehabilitation Act of 1973 (29 U.S.C. 794), for a
6 public transit entity that is responsible for providing
7 public transportation to fail to provide paratransit or
8 other special transportation services sufficient to pro-
9 vide a comparable level of services as is provided to
10 individuals using fixed route public transportation to in-
11 dividuals with disabilities, including individuals who use
12 wheelchairs, who cannot otherwise use fixed route
13 public transportation and to other individuals associated
14 with such individuals with disabilities in accordance
15 with service criteria established under regulations pro-
16 mulgated by the Secretary of Transportation unless the
17 public transit entity can demonstrate that the provision
18 of paratransit or other special transportation services
19 would impose an undue financial burden on the public
20 transit entity.

21 (2) UNDUE FINANCIAL BURDEN.—If the provision
22 of comparable paratransit or other special transporta-
23 tion services would impose an undue financial burden
24 on the public transit entity, such entity must provide
25 paratransit and other special transportation services to

1 the extent that providing such services would not
2 impose an undue financial burden on such entity.

3 (3) REGULATIONS.—

4 (A) FORMULA.—Regulations promulgated by
5 the Secretary of Transportation to determine what
6 constitutes an undue financial burden, for pur-
7 poses of this subsection, may include a flexible nu-
8 merical formula that incorporates appropriate
9 local characteristics such as population.

10 (B) ADDITIONAL PARATRANSIT SERV-
11 ICES.—Notwithstanding paragraphs (1) and (2),
12 the Secretary may require, at the discretion of the
13 Secretary, a public transit authority to provide
14 paratransit services beyond the amount deter-
15 mined by such formula.

16 (d) COMMUNITY OPERATING DEMAND RESPONSIVE
17 SYSTEMS FOR THE GENERAL PUBLIC.—If a public entity
18 operates a demand responsive system that is used to provide
19 public transportation for the general public, it shall be consid-
20 ered discrimination, for purposes of this Act and section 504
21 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such
22 individual or entity to purchase or lease a new vehicle, for
23 which a solicitation is made later than 30 days after the date
24 of enactment of this Act, that is not readily accessible to and
25 usable by individuals with disabilities, including individuals

1 who use wheelchairs, unless the entity can demonstrate that
2 such system, when viewed in its entirety, provides a level of
3 service to individuals with disabilities equivalent to that pro-
4 vided to the general public.

5 (e) TEMPORARY RELIEF WHERE LIFTS ARE UN-
6 AVAILABLE.—With respect to the purchase of new buses, a
7 public entity may apply for, and the Secretary of Transporta-
8 tion may temporarily relieve such public entity from the obli-
9 gation to purchase new buses of any size that are readily
10 accessible to and usable by individuals with disabilities if such
11 public entity demonstrates—

12 (1) that the initial solicitation for new buses made
13 by the public entity specified that all new buses were
14 to be lift-equipped and were to be otherwise accessible
15 to and usable by individuals with disabilities;

16 (2) the unavailability from any qualified manufac-
17 turer of hydraulic, electro-mechanical, or other lifts for
18 such new buses;

19 (3) that the public entity seeking temporary relief
20 has made good faith efforts to locate a qualified manu-
21 facturer to supply the lifts to the manufacturer of such
22 buses in sufficient time to comply with such solicita-
23 tion; and

24 (4) that any further delay in purchasing new buses
25 necessary to obtain such lifts would significantly impair

1 transportation services in the community served by the
2 public entity.

3 (f) CONSTRUCTION.—

4 (1) IN GENERAL.—Any relief granted under sub-
5 section (e) shall be limited in duration by a specified
6 date and the appropriate committees of the Congress
7 shall be notified of any such relief granted.

8 (2) FRAUDULENT APPLICATION.—If, at any time,
9 the Secretary of Transportation has reasonable cause
10 to believe that such relief was fraudulently applied for,
11 the Secretary of Transportation shall—

12 (A) cancel such relief, if such relief is still in
13 effect; and

14 (B) take other steps that the Secretary of
15 Transportation considers appropriate.

16 (g) NEW FACILITIES.—For purposes of this Act and
17 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
18 794), it shall be considered discrimination for a public entity
19 to build a new facility that will be used to provide public
20 transportation services, including bus service, intercity rail
21 service, rapid rail service, commuter rail service, light rail
22 service, and other service used for public transportation that
23 is not readily accessible to and usable by individuals with
24 disabilities, including individuals who use wheelchairs.

1 (h) ALTERATIONS OF EXISTING FACILITIES.—With
2 respect to a facility or any part thereof that is used for public
3 transportation and that is altered by, on behalf of, or for the
4 use of a public entity in a manner that affects or could affect
5 the usability of the facility or part thereof, it shall be consid-
6 ered discrimination, for purposes of this title and section 504
7 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such
8 individual or entity to fail to make the alterations in such a
9 manner that, to the maximum extent feasible, the altered
10 portions of the facility are readily accessible to and usable by
11 individuals with disabilities, including individuals who use
12 wheelchairs. If such public entity is undertaking major struc-
13 tural alterations that affect or could affect the usability of the
14 facility (as defined under criteria established by the Secretary
15 of Transportation), such public entity shall also make the al-
16 terations in such a manner that, to the maximum extent fea-
17 sible, the path of travel to the altered area, and the bath-
18 rooms, telephones, and drinking fountains serving such area,
19 are readily accessible to and usable by individuals with dis-
20 abilities, including individuals who use wheelchairs.

21 (i) EXISTING FACILITIES, INTERCITY RAIL, RAPID
22 RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND
23 KEY STATIONS.—

24 (1) EXISTING FACILITIES.—Except as provided
25 in paragraph (3), with respect to existing facilities used

1 for public transportation, it shall be considered discrim-
2 ination, for purposes of this Act and section 504 of the
3 Rehabilitation Act of 1973 (29 U.S.C. 794), for a
4 public entity to fail to operate such public transporta-
5 tion program or activity conducted in such facilities so
6 that, when viewed in the entirety, it is readily accessi-
7 ble to and usable by individuals with disabilities, in-
8 cluding individuals who use wheelchairs.

9 (2) INTERCITY, RAPID, LIGHT, AND COMMUTER
10 RAIL SYSTEMS.—With respect to vehicles operated by
11 intercity, light, rapid, and commuter rail systems, for
12 purposes of this title and section 504 of the Rehabilita-
13 tion Act of 1973 (29 U.S.C. 794), it shall be consid-
14 ered discrimination for a public entity to fail to have at
15 least one car per train that is accessible to individuals
16 with disabilities, including individuals who use wheel-
17 chairs, as soon as practicable but in any event in no
18 less than 5 years.

19 (3) KEY STATIONS.—

20 (A) IN GENERAL.—For purposes of this title
21 and section 504 of the Rehabilitation Act of 1973
22 (29 U.S.C. 794), it shall be considered discrimina-
23 tion for a public entity to fail to make stations in
24 intercity rail systems and key stations in rapid
25 rail, commuter rail, and light rail systems readily

1 accessible to and usable by individuals with dis-
2 abilities, including individuals who use wheel-
3 chairs.

4 (B) RAPID RAIL, COMMUTER RAIL, AND
5 LIGHT RAIL SYSTEMS.—Key stations in rapid
6 rail, commuter rail, and light rail systems shall be
7 made readily accessible to and usable by individ-
8 uals with disabilities, including individuals who
9 use wheelchairs, as soon as practicable but in no
10 event later than 3 years after the date of enact-
11 ment of this Act, except that the time limit may
12 be extended by the Secretary of Transportation
13 up to 20 years for extraordinarily expensive struc-
14 tural changes to, or replacement of, existing facili-
15 ties necessary to achieve accessibility.

16 (C) INTERCITY RAIL SYSTEMS.—All stations
17 in intercity rail systems shall be made readily ac-
18 cessible to and usable by individuals with disabil-
19 ities, including individuals who use wheelchairs,
20 as soon as practicable, but in no event later than
21 20 years after the date of enactment of this Act.

22 (D) PLANS AND MILESTONES.—The Secre-
23 tary of Transportation shall require the appropri-
24 ate public entity to develop a plan for compliance
25 with this paragraph that reflects consultation with

1 individuals with disabilities affected by such plan
2 and that establishes milestones for achievement of
3 the requirements of this paragraph.

4 **SEC. 204. REGULATIONS.**

5 (a) **ATTORNEY GENERAL.**—Not later than 1 year after
6 the date of enactment of this Act, the Attorney General shall
7 promulgate regulations in an accessible format that imple-
8 ment this title (other than section 203), and such regulations
9 shall be consistent with this title and with the coordination
10 regulations under part 41 of title 28, Code of Federal Regu-
11 lations (as promulgated by the Department of Health, Educa-
12 tion, and Welfare on January 13, 1978), applicable to recipi-
13 ents of Federal financial assistance under section 504 of the
14 Rehabilitation Act of 1973 (29 U.S.C. 794) except, with re-
15 spect to “program accessibility, existing facilities”, and
16 “communications”, such regulations shall be consistent with
17 regulations and analysis as in part 39 of title 28 of the Code
18 of Federal Regulations, applicable to federally conducted ac-
19 tivities under section 504 of the Rehabilitation Act of 1973
20 (29 U.S.C. 794).

21 (b) **SECRETARY OF TRANSPORTATION.**—

22 (1) **IN GENERAL.**—Not later than 1 year after the
23 date of enactment of this Act, the Secretary of Trans-
24 portation shall promulgate regulations in an accessible

1 format that include standards applicable to facilities
2 and vehicles covered under section 203 of this title.

3 (2) CONFORMANCE OF STANDARDS.—Such stand-
4 ards shall be consistent with the minimum guidelines
5 and requirements issued by the Architectural and
6 Transportation Barriers Compliance Board in accord-
7 ance with section 504.

8 SEC. 205. ENFORCEMENT.

9 The remedies, procedures, and rights set forth in section
10 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall
11 be available with respect to any individual who believes that
12 he or she is being subjected to discrimination on the basis of
13 disability in violation of this Act, or regulations promulgated
14 under section 204, concerning public services.

15 SEC. 206. EFFECTIVE DATE.

16 (a) IN GENERAL.—Except as provided in subsection (b),
17 this title shall become effective 18 months after the date of
18 enactment of this Act.

19 (b) FIXED ROUTE VEHICLES.—Section 203(b)(1), as
20 regarding new fixed route vehicles, shall become effective on
21 the date of enactment of this Act.

1 **TITLE III—PUBLIC ACCOMMODA-**
2 **TIONS AND SERVICES OPERAT-**
3 **ED BY PRIVATE ENTITIES**

4 **SEC. 301. DEFINITIONS.**

5 As used in this title:

6 (1) **COMMERCE.**—The term “commerce” means
7 travel, trade, traffic, commerce, transportation, or com-
8 munication—

9 (A) among the several States;

10 (B) between any foreign country or any terri-
11 tory or possession and any State; or

12 (C) between points in the same State but
13 through another State or foreign country.

14 (2) **POTENTIAL PLACES OF EMPLOYMENT.**—The
15 term “potential places of employment” means facili-
16 ties—

17 (A) that are intended for nonresidential use;

18 and

19 (B) whose operations will affect commerce.

20 Such term shall not include facilities that are covered
21 or expressly exempted from coverage under the Fair
22 Housing Act of 1968 (42 U.S.C. 3601 et seq.).

23 (3) **PUBLIC ACCOMMODATION.**—The following
24 privately operated entities are considered public accom-

1 modations for purposes of this title, if the operations of
2 such entities affect commerce—

3 (A) an inn, hotel, motel, or other similar
4 place of lodging, except for an establishment lo-
5 cated within a building that contains not more
6 than five rooms for rent or hire and that is actual-
7 ly occupied by the proprietor of such establish-
8 ment as the residence of such proprietor;

9 (B) a restaurant, bar, or other establishment
10 serving food or drink;

11 (C) a motion picture house, theater, concert
12 hall, stadium, or other place of exhibition or
13 entertainment;

14 (D) an auditorium, convention center, or lec-
15 ture hall;

16 (E) a bakery, grocery store, clothing store,
17 hardware store, shopping center, or other similar
18 retail sales establishment;

19 (F) a laundromat, dry-cleaners, bank, barber
20 shop, beauty shop, travel service, shoe repair
21 service, funeral parlor, gas station, office of an ac-
22 countant or lawyer, pharmacy, insurance office,
23 professional office of a health care provider, hospi-
24 tal, or other similar service establishment;

25 (G) a terminal used for public transportation;

1 (H) a museum, library, gallery, and other
2 similar place of public display or collection;

3 (I) a park or zoo;

4 (J) a nursery, elementary, secondary, under-
5 graduate, or postgraduate private school;

6 (K) a day care center, senior citizen center,
7 homeless shelter, food bank, adoption program, or
8 other similar social service center; and

9 (L) a gymnasium, health spa, bowling alley,
10 golf course, or other similar place of exercise or
11 recreation.

12 (4) PUBLIC TRANSPORTATION.—The term
13 “public transportation” means transportation by bus or
14 rail, or by any other conveyance (other than by air
15 travel) that provides the general public with general or
16 special service (including charter service) on a regular
17 and continuing basis.

18 (5) READILY ACHIEVABLE.—

19 (A) IN GENERAL.—The term “readily
20 achievable” means easily accomplishable and able
21 to be carried out without much difficulty or
22 expense.

23 (B) DETERMINATION.—In determining
24 whether an action is readily achievable, factors to
25 be considered include—

1 (i) the overall size of the covered entity
2 with respect to number of employees,
3 number and type of facilities, and the size of
4 budget;

5 (ii) the type of operation of the covered
6 entity, including the composition and struc-
7 ture of the entity; and

8 (iii) the nature and cost of the action
9 needed.

10 **SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC AC-**
11 **COMMODATIONS.**

12 (a) **GENERAL RULE.**—No individual shall be discrimi-
13 nated against on the basis of disability in the full and equal
14 enjoyment of the goods, services, facilities, privileges, advan-
15 tages, and accommodations of any place of public accommo-
16 dation.

17 (b) **CONSTRUCTION.**—

18 (1) **GENERAL PROHIBITION.**—

19 (A) **ACTIVITIES.**—

20 (i) **DENIAL OF PARTICIPATION.**—It
21 shall be discriminatory to subject an individ-
22 ual or class of individuals on the basis of a
23 disability or disabilities of such individual or
24 class, directly, or through contractual, licens-
25 ing, or other arrangements, to a denial of the

1 opportunity of the individual or class to par-
 2 ticipate in or benefit from the goods, serv-
 3 ices, facilities, privileges, advantages, and ac-
 4 commodations of an entity.

5 (ii) PARTICIPATION IN UNEQUAL BENE-
 6 FIT.—It shall be discriminatory to afford an
 7 individual or class of individuals, on the basis
 8 of a disability or disabilities of such individ-
 9 ual or class, directly, or through contractual,
 10 licensing, or other arrangements with the op-
 11 portunity to participate in or benefit from a
 12 good, service, facility, privilege, advantage,
 13 and accommodation that is not equal to that
 14 afforded to other individuals.

15 (iii) SEPARATE BENEFIT.—It shall be
 16 discriminatory to provide an individual or
 17 class of individuals, on the basis of a disabil-
 18 ity or disabilities of such individual or class,
 19 directly, or through contractual, licensing, or
 20 other arrangements with a good, service, fa-
 21 cility, privilege, advantage, or accommoda-
 22 tion that is different or separate from that
 23 provided to other individuals, unless such
 24 action is necessary to provide the individual
 25 or class of individuals with a good, service,

1 facility, privilege, advantage, or accommoda-
2 tion, or other opportunity that is as effective
3 as that provided to others.

4 (B) INTEGRATED SETTINGS.—Goods, facili-
5 ties, privileges, advantages, accommodations, and
6 services shall be afforded to an individual with a
7 disability in the most integrated setting appropri-
8 ate to the needs of the individual.

9 (C) OPPORTUNITY TO PARTICIPATE.—Not-
10 withstanding the existence of separate or different
11 programs or activities provided in accordance with
12 this section, an individual with a disability shall
13 not be denied the opportunity to participate in
14 such programs or activities that are not separate
15 or different.

16 (D) ADMINISTRATIVE METHODS.—An indi-
17 vidual or entity shall not, directly or through con-
18 tractual or other arrangements, utilize standards
19 or criteria or methods of administration—

20 (i) that have the effect of discriminating
21 on the basis of disability; or

22 (ii) that perpetuate the discrimination of
23 others who are subject to common adminis-
24 trative control.

1 (E) ASSOCIATION.—It shall be discriminato-
2 ry to exclude or otherwise deny equal goods,
3 services, facilities, privileges, advantages, and ac-
4 commodations, or other opportunities to an indi-
5 vidual or entity because of the known disability of
6 an individual with whom the individual or entity
7 is known to have a relationship or association.

8 (2) SPECIFIC PROHIBITIONS.—

9 (A) DISCRIMINATION.—As used in subsec-
10 tion (a), the term “discrimination” shall include—

11 (i) the imposition or application of eligi-
12 bility criteria that screen out or tend to
13 screen out an individual with a disability or
14 any class of individuals with disabilities from
15 fully and equally enjoying any goods, serv-
16 ices, facilities, privileges, advantages, and ac-
17 commodations, unless such criteria can be
18 shown to be necessary for the provision of
19 the goods, services, facilities, privileges, ad-
20 vantages, or accommodations being offered;

21 (ii) a failure to make reasonable modifi-
22 cations in policies, practices, procedures,
23 when such modifications are necessary to
24 afford such goods, services, facilities, privi-
25 leges, advantages, and accommodations to

1 individuals with disabilities, unless the entity
2 can demonstrate that making such modifica-
3 tions would fundamentally alter the nature of
4 such goods, services, facilities, privileges, ad-
5 vantages, and accommodations;

6 (iii) a failure to take such steps as may
7 be necessary to ensure that no individual
8 with a disability is excluded, denied services,
9 segregated or otherwise treated differently
10 than other individual because of the absence
11 of auxiliary aids and services, unless the
12 entity can demonstrate that taking such steps
13 would fundamentally alter the nature of the
14 good, service, facility, privilege, advantage,
15 or accommodation being offered or would
16 result in undue burden;

17 (iv) a failure to remove architectural
18 barriers, and communication barriers that are
19 structural in nature, in existing facilities, and
20 transportation barriers in existing vehicles
21 used by an establishment for transporting in-
22 dividuals (not including barriers that can only
23 be removed through the retrofitting of vehi-
24 cles by the installation of a hydraulic or

1 other lift), where such removal is readily
2 achievable;

3 (v) where an entity can demonstrate
4 that the removal of a barrier under clause
5 (iv) is not readily achievable, a failure to
6 make such goods, services, facilities, privi-
7 leges, advantages, and accommodations
8 available through alternative methods if such
9 methods are readily achievable;

10 (vi) with respect to a facility or part
11 thereof that is altered by, on behalf of, or for
12 the use of an establishment in a manner that
13 affects or could affect the usability of the fa-
14 cility or part thereof, a failure to make alter-
15 ations in such a manner that, to the maxi-
16 mum extent feasible, the altered portions of
17 the facility are readily accessible to and
18 usable by individuals with disabilities, includ-
19 ing individuals who use wheelchairs, and
20 where the entity is undertaking major struc-
21 tural alterations that affect or could affect
22 the usability of the facility (as defined under
23 criteria established by the Attorney General),
24 the entity shall also make the alterations in
25 such a manner that, to the maximum extent

feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities, except that this paragraph shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

(B) FIXED ROUTE SYSTEM.—

(i) **ACCESSIBILITY.**—It shall be considered discrimination for an entity that uses a vehicle for a fixed route system to transport individuals not covered under section 203 or 304, to purchase or lease a bus or a vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and

1 usable by individuals with disabilities (includ-
2 ing individuals who use wheelchairs), except
3 that over-the-road buses shall be subject to
4 section 304(b)(4) and section 305.

5 (ii) **EQUIVALENT SERVICE.**—If such
6 entity purchases or leases a vehicle carrying
7 16 or less passengers after the effective date
8 of this title that is not readily accessible to
9 or usable by individuals with disabilities, it
10 shall be discriminatory for such entity to fail
11 to operate a system that, when viewed in its
12 entirety, ensures a level of service to individ-
13 uals with disabilities, including individuals
14 who use wheelchairs, equivalent to the level
15 of service provided to the general public.

16 (C) **DEMAND RESPONSIVE SYSTEM.**—As
17 used in subsection (a), the term “discrimination”
18 shall include, in the case of a covered entity that
19 uses vehicles in a demand responsive system to
20 transport individuals not covered under section
21 203 or 304, an incident in which—

22 (i) such entity purchases or leases a ve-
23 hicle carrying 16 or less passengers after the
24 effective date of this title, a failure to operate
25 a system that, when viewed in its entirety,

1 ensures a level of service to individuals with
2 disabilities, including individuals who use
3 wheelchairs, equivalent to the level of serv-
4 ice provided to the general public; and

5 (ii) such entity purchases or leases a bus
6 or a vehicle that can carry in excess of 16
7 passengers for which solicitations are made
8 later than 30 days after the effective date of
9 this Act, that is not readily accessible to and
10 usable by individuals with disabilities (includ-
11 ing individuals who use wheelchairs) unless
12 such entity can demonstrate that such
13 system, when viewed in its entirety, already
14 provides a level of service to individuals with
15 disabilities equivalent to that provided to the
16 general public, except that over-the-road
17 buses shall be subject to section 304(b)(4)
18 and section 305.

19 **SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS**
20 **AND POTENTIAL PLACES OF EMPLOYMENT.**

21 (a) **APPLICATION OF TERM.**—Except as provided in
22 subsection (b), as applied to a—

- 23 (1) public accommodation; and
24 (2) potential place of employment;

1 the term “discrimination” as used in section 302(a) shall
2 mean a failure to design and construct facilities for first occu-
3 pancy later than 30 months after the date of enactment of
4 this Act that are readily accessible to and usable by individ-
5 uals with disabilities, except where an entity can demonstrate
6 that it is structurally impracticable to meet the requirements
7 of such subsection in accordance with standards set forth or
8 incorporated by reference in regulations issued under this
9 title.

10 (b) ELEVATOR.—Subsection (a) shall not be construed
11 to require the installation of an elevator for facilities that are
12 less than three stories or have less than 3,000 square feet per
13 story unless the building is a shopping center, a shopping
14 mall, or the professional office of a health care provider or
15 unless the Attorney General determines that a particular cat-
16 egory of such facilities requires the installation of elevators
17 based on the usage of such facilities.

18 **SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC**
19 **TRANSPORTATION SERVICES PROVIDED BY**
20 **PRIVATE ENTITIES.**

21 (a) GENERAL RULE.—No individual shall be discrimi-
22 nated against on the basis of disability in the full and equal
23 enjoyment of public transportation services provided by a pri-
24 vately operated entity that is primarily engaged in the busi-
25 ness of transporting people, but is not in the principal busi-

1 ness of providing air transportation, and whose operations
2 affect commerce.

3 (b) CONSTRUCTION.—As used in subsection (a), the
4 term “discrimination against” includes—

5 (1) the imposition or application by an entity of
6 eligibility criteria that screen out or tend to screen out
7 an individual with a disability or any class of individ-
8 uals with disabilities from fully enjoying the public
9 transportation services provided by the entity;

10 (2) the failure of an entity to—

11 (A) make reasonable modifications consistent
12 with those required under section 302(b)(2)(A)(ii);

13 (B) provide auxiliary aids and services con-
14 sistent with the requirements of section
15 302(b)(2)(A)(iii); and

16 (C) remove barriers consistent with the re-
17 quirements of section 302(b)(2)(A) (iv), (v), and
18 (vi);

19 (3) the purchase or lease of a new vehicle (other
20 than an automobile or an over-the-road bus) that is to
21 be used to provide public transportation services, and
22 for which a solicitation is made later than 30 days
23 after the date of enactment of this Act, that is not
24 readily accessible to and usable by individuals with dis-
25 abilities, including individuals who use wheelchairs

1 (except in the case of a vehicle used in a demand re-
 2 sponse system, in which case the new vehicle need not
 3 be readily accessible to and usable by individuals with
 4 disabilities if the entity can demonstrate that such
 5 system, when viewed in its entirety, provides a level of
 6 service to individuals with disabilities equivalent to the
 7 level of service provided to the general public); and

8 (4) the purchase or lease of a new over-the-road
 9 bus that is used to provide public transportation serv-
 10 ices and for which a solicitation is made later than 7
 11 years after the date of enactment of this Act for small
 12 providers (as defined by the Secretary of Transporta-
 13 tion) and 6 years for other providers, except as provid-
 14 ed in section 305(d), that is not readily accessible to
 15 and usable by individuals with disabilities, including in-
 16 dividuals who use wheelchairs.

17 SEC. 305. STUDY.

18 (a) PURPOSE.—The Office of Technology Assessment
 19 shall undertake a study to determine—

20 (1) the access needs of individuals with disabilities
 21 to over-the-road buses; and

22 (2) the most cost effective methods for making
 23 over-the-road buses readily accessible to and usable by
 24 individuals with disabilities, particularly individuals
 25 who use wheelchairs.

1 (b) CONTENT.—The study shall analyze issues,
2 including—

3 (1) the anticipated demand by individuals with dis-
4 abilities for accessible over-the-road buses;

5 (2) the degree to which over-the road buses are
6 readily accessible to and usable by individuals with dis-
7 abilities;

8 (3) the cost of providing accessibility to over-the-
9 road buses to individuals with disabilities, including
10 recent technological and cost saving developments in
11 equipment and devices providing such accessibility;

12 (4) possible design changes in over-the-road buses
13 that could enhance such accessibility; and

14 (5) the impact of accessibility requirements on the
15 continuation of inter-city bus service by over-the-road
16 buses, with particular consideration of impact on rural
17 service.

18 (c) ADVISORY COMMITTEE.—In conducting the study
19 required by subsection (a), the Office of Technology Assess-
20 ment shall establish an advisory committee, which shall con-
21 sist of—

22 (1) members selected from among private opera-
23 tors using over-the-road buses, bus manufacturers, and
24 lift manufacturers;

1 (2) members selected from among individuals with
2 disabilities, particularly individuals who use wheel-
3 chairs, who are potential riders of such buses; and

4 (3) members selected for their technical expertise
5 on issues included in the study.

6 The number of members selected under each of paragraphs
7 (1) and (2) shall be equal, and the total number of members
8 selected under paragraphs (1) and (2) shall exceed the
9 number of members selected under paragraph (3).

10 (d) DEADLINE.—The study required by subsection (a),
11 along with recommendations by the Office of Technology As-
12 sessment, including any policy options for legislative action,
13 shall be submitted to the President and the Congress within
14 36 months after the date of enactment of this Act. If the
15 President, after reviewing the study, determines that compli-
16 ance with the requirements of section 304(a) on or before the
17 applicable deadlines specified in section 304(b)(4) will result
18 in a significant reduction in intercity bus service, each such
19 deadline shall be extended by one additional year.

20 (e) REVIEW.—In developing the study required by sub-
21 section (a), the Office of Technology Assessment shall pro-
22 vide a preliminary draft of such study to the Architectural
23 and Transportation Barriers Compliance Board established
24 under section 502 of the Rehabilitation Act of 1973 (29
25 U.S.C. 792). The Board shall have an opportunity to com-

1 ment on such draft study, and any such comments by the
2 Board made in writing within 120 days after the Board's
3 receipt of the draft study shall be incorporated as part of the
4 final study required to be submitted under subsection (d).

5 **SEC. 306. REGULATIONS.**

6 (a) **ACCESSIBILITY STANDARDS.**—Not later than 1
7 year after the date of enactment of this Act, the Secretary of
8 Transportation shall issue regulations in an accessible format
9 that shall include standards applicable to facilities and vehi-
10 cles covered under section 302(b)(2) (B) and (C) and section
11 304.

12 (b) **OTHER PROVISIONS.**—Not later than 1 year after
13 the date of enactment of this Act, the Attorney General shall
14 issue regulations in an accessible format to carry out the re-
15 maining provisions of this title not referred to in subsection
16 (a) that include standards applicable to facilities and vehicles
17 covered under section 302.

18 (c) **STANDARDS.**—Standards included in regulations
19 issued under subsections (a) and (b) shall be consistent with
20 the minimum guidelines and requirements issued by the Ar-
21 chitectural and Transportation Barriers Compliance Board in
22 accordance with section 504.

1 **SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS**
2 **ORGANIZATIONS.**

3 The provisions of this title shall not apply to private
4 clubs or establishments exempted from coverage under title
5 II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or
6 to religious organizations or entities controlled by religious
7 organizations, including places of worship.

8 **SEC. 308. ENFORCEMENT.**

9 **(a) IN GENERAL.—**

10 **(1) AVAILABILITY OF REMEDIES AND PROCE-**
11 **DURES.—**The remedies and procedures set forth in sec-
12 tion 204 of the Civil Rights Act of 1964 (42 U.S.C.
13 sec. 2000a-3(a)) shall be available to any individual
14 who is being or is about to be subjected to discrimina-
15 tion on the basis of disability in violation of this title.

16 **(2) INJUNCTIVE RELIEF.—**In the case of viola-
17 tions of section 302(b)(2)(A)(iv) and (vi) and section
18 303(a), injunctive relief shall include an order to alter
19 facilities to make such facilities readily accessible to
20 and usable by individuals with disabilities to the extent
21 required by this title. Where appropriate, injunctive
22 relief shall also include requiring the provision of an
23 auxiliary aid or service, modification of a policy, or
24 provision of alternative methods, to the extent required
25 by this title.

26 **(b) ENFORCEMENT BY THE ATTORNEY GENERAL.—**

1 (1) DENIAL OF RIGHTS.—

2 (A) DUTY TO INVESTIGATE.—The Attorney
3 General shall investigate alleged violations of this
4 title, which shall include undertaking periodic re-
5 views of compliance of covered entities under this
6 title.

7 (B) POTENTIAL VIOLATION.—If the Attor-
8 ney General has reasonable cause to believe that
9 any person or group of persons is engaged in a
10 pattern or practice of resistance to the full enjoy-
11 ment of any of the rights granted by this title or
12 that any person or group of persons has been
13 denied any of the rights granted by such title, and
14 such denial raises an issue of general public im-
15 portance, the Attorney General may commence a
16 civil action in any appropriate United States dis-
17 trict court.

18 (2) AUTHORITY OF COURT.—In a civil action
19 under paragraph (1), the court—

20 (A) may grant any equitable relief that such
21 court considers to be appropriate, including grant-
22 ing temporary, preliminary, or permanent relief,
23 providing an auxiliary aid or service, modification
24 of policy or alternative method, or making facili-
25 ties readily accessible to and usable by individuals

1 with disabilities, to the extent required by this
2 title;

3 (B) may award such other relief as the court
4 considers to be appropriate, including monetary
5 damages to persons aggrieved when requested by
6 the Attorney General; and

7 (C) may, to vindicate the public interest,
8 assess a civil penalty against the entity in an
9 amount—

10 (i) not exceeding \$50,000 for a first vio-
11 lation; and

12 (ii) not exceeding \$100,000 for any sub-
13 sequent violation.

14 (3) JUDICIAL CONSIDERATION.—In a civil action
15 under paragraph (1), the court, when considering what
16 amount of civil penalty, if any, is appropriate, shall
17 give consideration to any good faith effort or attempt
18 to comply with this Act by the entity.

19 **SEC. 309. EFFECTIVE DATE.**

20 This title shall become effective 18 months after the
21 date of enactment of this Act.

**TITLE IV—
TELECOMMUNICATIONS
RELAY SERVICES**

**SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-
IMPAIRED AND SPEECH-IMPAIRED INDIVID-
UALS.**

(a) **TELECOMMUNICATIONS.**—Title II of the Communi-
cations Act of 1934 (47 U.S.C. 201 et seq.) is amended by
adding at the end thereof the following new section:

**“SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-
IMPAIRED AND SPEECH-IMPAIRED INDIVID-
UALS.**

“(a) DEFINITIONS.—As used in this section—

“(1) COMMON CARRIER OR CARRIER.—The term
‘common carrier’ or ‘carrier’ includes any common car-
rier engaged in interstate communication by wire or
radio as defined in section 3(h), any common carrier
engaged in intrastate communication by wire or radio,
and any common carrier engaged in both interstate and
intrastate communication, notwithstanding sections 2(b)
and 221(b).

“(2) TDD.—The term ‘TDD’ means a Telecom-
munications Device for the Deaf, which is a machine
that employs graphic communication in the transmis-

1 sion of coded signals through a wire or radio communi-
2 cation system.

3 “(3) TELECOMMUNICATIONS RELAY SERVICES.—

4 The term ‘telecommunications relay services’ means
5 telephone transmission services that provide the ability
6 for an individual who has a hearing impairment or
7 speech impairment to engage in communication by
8 wire or radio with a hearing individual in a manner
9 that is functionally equivalent to the ability of an indi-
10 vidual who does not have a hearing impairment or
11 speech impairment to communicate using voice commu-
12 nication services by wire or radio. Such term includes
13 services that enable two-way communication between
14 an individual who uses a TDD or other nonvoice ter-
15 minal device and an individual who does not use such
16 a device.

17 “(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY
18 SERVICES.—

19 “(1) IN GENERAL.—In order to carry out the pur-
20 poses established under section 1, to make available to
21 all individuals in the United States a rapid, efficient
22 nationwide communication service, and to increase the
23 utility of the telephone system of the Nation, the Com-
24 mission shall ensure that interstate and intrastate tele-
25 communications relay services are available, to the

1 extent possible and in the most efficient manner, to
2 hearing-impaired and speech-impaired individuals in the
3 United States.

4 “(2) REMEDIES.—For purposes of this section,
5 the same remedies, procedures, rights, and obligations
6 under this Act that are applicable to common carriers
7 engaged in interstate communication by wire or radio
8 are also applicable to common carriers engaged in
9 intrastate communication by wire or radio and common
10 carriers engaged in both interstate and intrastate com-
11 munication by wire or radio.

12 “(c) PROVISION OF SERVICES.—Each common carrier
13 providing telephone voice transmission services shall provide
14 telecommunications relay services individually, through des-
15 ignees, or in concert with other carriers not later than 3
16 years after the date of enactment of this section.

17 “(d) REGULATIONS.—

18 “(1) IN GENERAL.—The Commission shall, not
19 later than 1 year after the date of enactment of this
20 section, prescribe regulations to implement this section,
21 including regulations that—

22 “(A) establish functional requirements, guide-
23 lines, and operations procedures for telecommuni-
24 cations relay services;

1 “(B) establish minimum standards that shall
2 be met by common carriers in carrying out sub-
3 section (c);

4 “(C) require that telecommunications relay
5 services operate every day for 24 hours per day;

6 “(D) require that users of telecommunica-
7 tions relay services pay rates no greater than the
8 rates paid for functionally equivalent voice com-
9 munication services with respect to such factors
10 as the duration of the call, the time of day, and
11 the distance from point of origination to point of
12 termination;

13 “(E) prohibit relay operators from refusing
14 calls or limiting the length of calls that use tele-
15 communications relay services;

16 “(F) prohibit relay operators from disclosing
17 the content of any relayed conversation and from
18 keeping records of the content of any such con-
19 versation beyond the duration of the call; and

20 “(G) prohibit relay operators from intention-
21 ally altering a relayed conversation.

22 “(2) TECHNOLOGY.—The Commission shall
23 ensure that regulations prescribed to implement this
24 section encourage the use of existing technology and

1 do not discourage or impair the development of im-
2 proved technology.

3 “(3) JURISDICTIONAL SEPARATION OF COSTS.—

4 “(A) IN GENERAL.—The Commission shall
5 prescribe regulations governing the jurisdictional
6 separation of costs for the services provided pur-
7 suant to this section.

8 “(B) RECOVERING COSTS.—Such regulations
9 shall generally provide that costs caused by inter-
10 state telecommunications relay services shall be
11 recovered from the interstate jurisdiction and
12 costs caused by intrastate telecommunications
13 relay services shall be recovered from the intra-
14 state jurisdiction.

15 “(C) JOINT PROVISION OF SERVICES.—To
16 the extent interstate and intrastate common carri-
17 ers jointly provide telecommunications relay serv-
18 ices, the procedures established in section 410
19 shall be followed, as applicable.

20 “(4) FIXED MONTHLY CHARGE.—The Commis-
21 sion shall not permit carriers to impose a fixed monthly
22 charge on residential customers to recover the costs of
23 providing interstate telecommunication relay services.

24 “(5) UNDUE BURDEN.—If the Commission finds
25 that full compliance with the requirements of this sec-

1 tion would unduly burden one or more common carri-
2 ers, the Commission may extend the date for full com-
3 pliance by such carrier for a period not to exceed 1 ad-
4 ditional year.

5 “(e) ENFORCEMENT.—

6 “(1) IN GENERAL.—Subject to subsections (f) and
7 (g), the Commission shall enforce this section.

8 “(2) COMPLAINT.—The Commission shall re-
9 solve, by final order, a complaint alleging a violation of
10 this section within 180 days after the date such com-
11 plaint is filed.

12 “(f) CERTIFICATION.—

13 “(1) STATE DOCUMENTATION.—Each State may
14 submit documentation to the Commission that describes
15 the program of such State for implementing intrastate
16 telecommunications relay services.

17 “(2) REQUIREMENTS FOR CERTIFICATION.—
18 After review of such documentation, the Commission
19 shall certify the State program if the Commission de-
20 termines that the program makes available to hearing-
21 impaired and speech-impaired individuals either direct-
22 ly, through designees, or through regulation of intra-
23 state common carriers, intrastate telecommunications
24 relay services in such State in a manner that meets the

1 requirements of regulations prescribed by the Commis-
2 sion under subsection (d).

3 “(3) METHOD OF FUNDING.—Except as provided
4 in subsection (d), the Commission shall not refuse to
5 certify a State program based solely on the method
6 such State will implement for funding intrastate tele-
7 communication relay services.

8 “(4) SUSPENSION OR REVOCATION OF CERTIFI-
9 CATION.—The Commission may suspend or revoke
10 such certification if, after notice and opportunity for
11 hearing, the Commission determines that such certifica-
12 tion is no longer warranted.

13 “(g) COMPLAINT.—

14 “(1) REFERRAL OF COMPLAINT.—If a complaint
15 to the Commission alleges a violation of this section
16 with respect to intrastate telecommunications relay
17 services within a State and certification of the program
18 of such State under subsection (f) is in effect, the Com-
19 mission shall refer such complaint to such State.

20 “(2) JURISDICTION OF COMMISSION.—After re-
21 ferring a complaint to a State under paragraph (1), the
22 Commission shall exercise jurisdiction over such com-
23 plaint only if—

1 “(A) final action under such State program
2 has not been taken on such complaint by such
3 State—

4 “(i) within 180 days after the complaint
5 is filed with such State; or

6 “(ii) within a shorter period as pre-
7 scribed by the regulations of such State; or

8 “(B) the Commission determines that such
9 State program is no longer qualified for certifica-
10 tion under subsection (f).”.

11 (b) CONFORMING AMENDMENTS.—The Communica-
12 tions Act of 1934 (47 U.S.C. 151 et seq.) is amended—

13 (1) in section 2(b) (47 U.S.C. 152(b)), by striking
14 “section 224” and inserting “sections 224 and 225”;
15 and

16 (2) in section 221(b) (47 U.S.C. 221(b)), by strik-
17 ing “section 301” and inserting “sections 225 and
18 301”.

19 **TITLE V—MISCELLANEOUS** 20 **PROVISIONS**

21 SEC. 501. CONSTRUCTION.

22 (a) REHABILITATION ACT OF 1973.—Nothing in this
23 Act shall be construed to reduce the scope of coverage or
24 apply a lesser standard than the coverage required or the
25 standards applied under title V of the Rehabilitation Act of

1 1973 (29 U.S.C. 790 et seq.) or the regulations issued by
2 Federal agencies pursuant to such title.

3 (b) OTHER LAWS.—Nothing in this Act shall be con-
4 strued to invalidate or limit any other Federal law or law of
5 any State or political subdivision of any State or jurisdiction
6 that provides greater or equal protection for the rights of
7 individuals with disabilities than are afforded by this Act.

8 (c) INSURANCE.—Titles I through IV of this Act shall
9 not be construed to prohibit or restrict—

10 (1) an insurer, hospital or medical service compa-
11 ny, health maintenance organization, or any agent, or
12 entity that administers benefit plans, or similar organi-
13 zations from underwriting risks, classifying risks, or ad-
14 ministering such risks that are based on or not incon-
15 sistent with State law; or

16 (2) a person or organization covered by this Act
17 from establishing, sponsoring, observing or administer-
18 ing the terms of a bona fide benefit plan that are based
19 on underwriting risks, classifying risks, or administer-
20 ing such risks that are based on or not inconsistent
21 with State law;

22 (3) a person or organization covered by this Act
23 from establishing, sponsoring, observing or administer-
24 ing the terms of a bona fide benefit plan that is not
25 subject to State laws that regulate insurance:

1 *Provided*, That paragraphs (1), (2), and (3) are not used as a
2 subterfuge to evade the purposes of title I and III.

3 SEC. 502. PROHIBITION AGAINST RETALIATION AND COER-
4 CION.

5 (a) RETALIATION.—No individual shall discriminate
6 against any other individual because such other individual
7 has opposed any act or practice made unlawful by this Act or
8 because such other individual made a charge, testified, assist-
9 ed, or participated in any manner in an investigation, pro-
10 ceeding, or hearing under this Act.

11 (b) INTERFERENCE, COERCION, OR INTIMIDATION.—It
12 shall be unlawful to coerce, intimidate, threaten, or interfere
13 with any person in the exercise or enjoyment of, or on ac-
14 count of his or her having exercised or enjoyed, or on account
15 of his or her having aided or encouraged any other person in
16 the exercise or enjoyment of, any right granted or protected
17 by this Act.

18 (c) REMEDIES AND PROCEDURES.—The remedies and
19 procedures available under sections 107, 205, and 308 of this
20 Act shall be available to aggrieved persons for violations of
21 subsections (a) and (b).

22 SEC. 503. STATE IMMUNITY.

23 A State shall not be immune under the eleventh amend-
24 ment to the Constitution of the United States from an action
25 in Federal court for a violation of this Act. In any action

1 against a State for a violation of the requirements of this Act,
2 remedies (including remedies both at law and in equity) are
3 available for such a violation to the same extent as such rem-
4 edies are available for such a violation in an action against
5 any public or private entity other than a State.

6 **SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANS-**
7 **PORTATION BARRIERS COMPLIANCE BOARD.**

8 (a) **ISSUANCE OF GUIDELINES.**—Not later than 6
9 months after the date of enactment of this Act, the Architec-
10 tural and Transportation Barriers Compliance Board shall
11 issue minimum guidelines that shall supplement the existing
12 Minimum Guidelines and Requirements for Accessible Design
13 for purposes of titles II and III.

14 (b) **CONTENTS OF GUIDELINES.**—The guidelines issued
15 under subsection (a) shall establish additional requirements,
16 consistent with this Act, to ensure that buildings, facilities,
17 and vehicles are accessible, in terms of architecture and
18 design, transportation, and communication, to individuals
19 with disabilities.

20 **SEC. 505. ATTORNEY'S FEES.**

21 In any action or administrative proceeding commenced
22 pursuant to this Act, the court or agency, in its discretion,
23 may allow the prevailing party, other than the United States,
24 a reasonable attorney's fee, including litigation expenses, and

1 costs, and the United States shall be liable for the foregoing
2 the same as a private individual.

3 **SEC. 506. TECHNICAL ASSISTANCE.**

4 (a) **PLAN FOR ASSISTANCE.**—

5 (1) **IN GENERAL.**—Not later than 180 days after
6 the date of enactment of this Act, the Attorney General,
7 al, in consultation with the Chairman of the Equal
8 Employment Opportunity Commission, the Secretary of
9 Transportation, the National Council on Disability, the
10 Chairperson of the Architectural and Transportation
11 Barriers Compliance Board, and the Chairman of Federal
12 Communications Commission, shall develop a plan
13 to assist entities covered under this Act, along with
14 other executive agencies and commissions, in understanding
15 the responsibility of such entities, agencies,
16 and commissions under this Act.

17 (2) **PUBLICATION OF PLAN.**—The Attorney General
18 shall publish the plan referred to in paragraph (1)
19 for public comment in accordance with the Administrative
20 Procedure Act (5 U.S.C. 551 et seq.).

21 (b) **AGENCY AND PUBLIC ASSISTANCE.**—The Attorney
22 General is authorized to obtain the assistance of other Federal
23 al agencies in carrying out subsection (a), including the National
24 tional Council on Disability, the President's Committee on

1 Employment of People with Disabilities, the Small Business
2 Administration, and the Department of Commerce.

3 (c) IMPLEMENTATION.—

4 (1) AUTHORITY TO CONTRACT.—Each depart-
5 ment or agency that has responsibility for implement-
6 ing this Act may render technical assistance to individ-
7 uals and institutions that have rights or responsibilities
8 under this Act.

9 (2) IMPLEMENTATION OF TITLES.—

10 (A) TITLE I.—The Equal Employment Op-
11 portunity Commission and the Attorney General
12 shall implement the plan for assistance, as de-
13 scribed in subsection (a), for title I.

14 (B) TITLE II.—

15 (i) IN GENERAL.—Except as provided
16 for in clause (ii), the Attorney General shall
17 implement such plan for assistance for title
18 II.

19 (ii) EXCEPTION.—The Secretary of
20 Transportation shall implement such plan for
21 assistance for section 203.

22 (C) TITLE III.—The Attorney General, in
23 coordination with the Secretary of Transportation
24 and the Chairperson of the Architectural Trans-

1 portation Barriers Compliance Board, shall imple-
2 ment such plan for assistance for title III.

3 (D) TITLE IV.—The Chairman of the Feder-
4 al Communications Commission, in coordination
5 with the Attorney General, shall implement such
6 plan for assistance for title IV.

7 (d) GRANTS AND CONTRACTS.—

8 (1) IN GENERAL.—Each department and agency
9 having responsibility for implementing this Act may
10 make grants or enter into contracts with individuals,
11 profit institutions, and nonprofit institutions, including
12 educational institutions and groups or associations rep-
13 resenting individuals who have rights or duties under
14 this Act, to effectuate the purposes of this Act.

15 (2) DISSEMINATION OF INFORMATION.—Such
16 grants and contracts, among other uses, may be de-
17 signed to ensure wide dissemination of information
18 about the rights and duties established by this Act and
19 to provide information and technical assistance about
20 techniques for effective compliance with this Act.

21 (e) FAILURE TO RECEIVE ASSISTANCE.—An employ-
22 er, public accommodation, or other entity covered under this
23 Act shall not be excused from meeting the requirements of
24 this Act because of any failure to receive technical assistance
25 under this section.

1 **SEC. 507. FEDERAL WILDERNESS AREAS.**

2 (a) **STUDY.**—The National Council on Disability shall
3 conduct a study and report on the effect that wilderness des-
4 ignations and wilderness land management practices have on
5 the ability of individuals with disabilities to use and enjoy the
6 National Wilderness Preservation System as established
7 under the Wilderness Act (16 U.S.C. 1131 et seq.).

8 (b) **SUBMISSION OF REPORT.**—Not later than 1 year
9 after the enactment of this Act, the National Council on Dis-
10 ability shall submit the report required under subsection (a) to
11 Congress.

12 **SEC. 508. TRANSVESTITES.**

13 For the purposes of this Act, the term “disabled” or
14 “disability” shall not apply to an individual solely because
15 that individual is a transvestite.

16 **SEC. 509. CONGRESSIONAL INCLUSION.**

17 Notwithstanding any other provision of this Act or of
18 law, the provisions of this Act shall apply in their entirety to
19 the Senate, the House of Representatives, and all the instru-
20 mentalities of the Congress, or either House thereof.

21 **SEC. 510. ILLEGAL DRUG USE.**

22 (a) For purposes of this Act, an individual with a “dis-
23 ability” shall not include any individual who uses illegal
24 drugs, but may include an individual who has successfully
25 completed a supervised drug rehabilitation program, or has

1 otherwise been rehabilitated successfully, and no longer uses
2 illegal drugs.

3 (b) However, for purposes of covered entities providing
4 medical services, an individual who uses illegal drugs shall
5 not be denied the benefits of such services on the basis of his
6 or her use of illegal drugs, if he or she is otherwise entitled to
7 such services.

8 SEC. 511. DEFINITIONS.

9 Under this Act the term "disability" does not include
10 "homosexuality", "bisexuality", "transvestism", "pedophi-
11 lia", "transsexualism", "exhibitionism", "voyeurism", "com-
12 pulsive gambling", "kleptomania", or "pyromania", "gender
13 identity disorders", "current psychoactive substance use dis-
14 orders", "current psychoactive substance-induced organic
15 mental disorders", as defined by DSM-III-R which are not
16 the result of medical treatment, or other sexual behavior dis-
17 orders.

18 SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

19 (a) HANDICAPPED INDIVIDUAL.—Section 7(7)(B) of the
20 Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is
21 amended—

22 (1) in the first sentence, by striking out "Subject
23 to the second sentence of this subparagraph, the" and
24 inserting in lieu thereof "The"; and

1 (2) by striking out the second sentence and insert-
2 ing in lieu thereof the following:

3 “Notwithstanding any other provision of law, but subject to
4 subsection (C) with respect to programs and activities provid-
5 ing education and the last sentence of this paragraph, the
6 term ‘individual with a handicap’ does not include any indi-
7 vidual who currently uses illegal drugs, except that an indi-
8 vidual who is otherwise handicapped shall not be excluded
9 from the protections of this Act if such individual also uses or
10 is also addicted to drugs. For purposes of programs and ac-
11 tivities providing medical services, an individual who current-
12 ly uses illegal drugs shall not be denied the benefits of such
13 programs or activities on the basis of his or her current use of
14 illegal drugs if he or she is otherwise entitled to such
15 services.

16 “(C) For purposes of programs and activities providing
17 educational services, local educational agencies may take dis-
18 ciplinary action pertaining to the use or possession of illegal
19 drugs or alcohol against any handicapped student who cur-
20 rently uses drugs or alcohol to the same extent that such
21 disciplinary action is taken against nonhandicapped students.
22 Furthermore, the due process procedures at 34 CFR 104.36
23 shall not apply to such disciplinary actions.

24 “(D) For purposes of sections 503 and 504 of this Act
25 as such sections relate to employment, the term ‘individual

1 with handicaps' does not include any individual who is an
2 alcoholic whose current use of alcohol prevents such individ-
3 ual from performing the duties of the job in question or whose
4 employment, by reason of such current alcohol abuse, would
5 constitute a direct threat to property or the safety of
6 others.”.

7 (b) Section 7 of such Act (29 U.S.C. 706) is further
8 amended by adding at the end thereof the following new
9 paragraph:

10 “(22) The term ‘illegal drugs’ means controlled sub-
11 stances, as defined in schedules I through V of section 202 of
12 the Controlled Substances Act (21 U.S.C. 812), the posses-
13 sion or distribution of which is unlawful under such Act. The
14 term ‘illegal drugs’ does not mean the use of a controlled
15 substance pursuant to a valid prescription or other uses au-
16 thorized by the Controlled Substances Act or other provisions
17 of Federal law.”.

18 **SEC. 513. SEVERABILITY.**

19 Should any provision in this Act be found to be uncon-
20 stitutional by a court of law, such provision shall be severed
21 from the remainder of the Act, and such action shall not

1 affect the enforceability of the remaining provisions of the
2 Act.

Passed the Senate September 7 (legislative day, September 6), 1989.

Attest:

Secretary.

101ST CONGRESS
1ST SESSION

S. 933

AN ACT

To establish a clear and comprehensive prohibition of
discrimination on the basis of disability.

**October 16 (legislative day, September 18),
1989**

Ordered to be printed as passed